DOCUMENT RESUME

ED 277 639 SO 017 870

AUTHOR	Merriman, W. Richard, Jr.
TITLE	"The Mischiefs of Faction": Campaigns, Money and the Public Good. A Guide for Discussion of Proposals to Limit Campaign Contributions and Expenditures.
INSTITUTION	Jefferson Foundation, Washington, DC.
PUB DATE	86
NOTE	26p.
AVAILABLE FROM	The Jefferson Foundation, 1529 18th Street, NW, Washington, DC 20036 ($0.75).
PUB TYPE	Historical Materials (060) -- Viewpoints (120)
EDRS PRICE	MF01/PC02 Plus Postage.
DESCRIPTORS	*Constitutional History; Democratic Values; Fund Raising; Higher Education; *Lobbying; *Political Campaigns; Political Candidates; Political Influences; Political Power; Power Structure; Public Opinion; Secondary Education; *United States History; *Voting
IDENTIFIERS	Federalist Papers; Political Action Committees; *United States Constitution

ABSTRACT

The necessity for candidates for public office to gather money in order to mount effective campaigns has raised concerns that campaign contributions may give some individuals and groups improper influence on the selection of public officials and the making of public policy. Part of this concern stems from the pluralist theory that maintains that every group which has an interest and is willing tc compete by the accepted rules can have some influence on public policy, and growing out of this theory is a claim that the "public good" in the old republican sense, does not exist in a meaningful way in United States society today. Instead of seeking a substantive public good, pluralism argues, we should focus on perfecting procedural guarantees that every group can make itself heard on issues about which it cares. This pluralist point of view almost completely reverses Madison's view that factions militated against the public good. Whether the old republican view of factions or the pluralist view of groups is valid is perhaps the key issue at the heart of current debates over amending the Constitution to allow limitations on campaign contributions and spending. Included are arguments for and against an amendment that would allow limits on campaign expenditures. (BZ)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED277639

"THE MISCHIEFS OF FACTION"

Campaigns, Money and the Public Good

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

✓ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

W. Richard Merriman Jr.

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

SO017870

A Guide for Discussion of Proposals to Limit Campaign Contributions and Expenditures

This discussion guide is one in a series on constitutional reform issues developed by The Jefferson Foundation as part of The Jefferson Meeting on the Constitution project. It may be photocopied in part or in full if attributed as follows: "Reprinted from a series of discussion guides on constitutional reform issues published by The Jefferson Foundation, Washington, DC." The Jefferson Foundation would appreciate notification from those who reproduce this material for use in other programs.

Written by W. Richard Merriman, Jr.

Copyright ©1986 by The Jefferson Foundation

Elections, and lots of them, are a central feature of American political life. Every seat in the U.S. House of Representatives is contested every two years. Every two years one third of the places in the U.S. Senate are filled by election. The rigors of modern campaigns to win the presidency mean that one presidential election is hardly ended before campaigns for the next begin. Add in primaries, elections in about 80,000 state and local jurisdictions, and popular votes—through initiatives and referenda—on matters of public policy, and the number of elections held every year in this country simply staggers the imagination. So does the expense of all those campaigns.

In 1972 the Nixon presidential campaign spent over $61,000,000 in defeating George McGovern, whose campaign spent $30,000,000. The cost of all elections in 1972 was $425 million. This figure increased "modestly" to $540 million in 1976, but jumped to $1.2 billion in 1980. (Alexander, 1984: 7-8). While this is undeniably a huge sum of money, political scientist Robert Lineberry helps put it in perspective by noting that Americans spend about $1 billion each year for power lawn mowers, and over $1.5 billion annually for the combined purchase of microwave ovens and the services of beauty shops (Lineberry, 1981: 235). Lineberry concludes that, all things considered, our elections are a "bargain."

Elections are important, and many an American would sooner live without a nice lawn than without the opportunity to learn about and choose between candidates for public office. But the matter of whether we spend too much for election campaigns is only one of the key questions raised by the increasing cost of campaigns and elections. More importantly, who contributes the money that is spent in political campaigns? Why do individuals and groups contribute to campaigns and what, if anything, do they expect in return? How do candidates raise money and for what purposes do they spend it? What, if anything, do candidates think they must do in return for campaign contributions? And most important, how does modern campaigning, its expense, and the need for campaign funds affect the quality of our national government?

REPUBLICAN GOVERNMENT AND THE PUBLIC GOOD

It has often been remarked that the men who designed the Constitution did not anticipate many of the changes in American society and politics that followed the completion of their work. Certainly the framers did not anticipate the development in the United States of a political system characterized by frequent popular elections pitting candidates from political parties against each other. It could be argued, as a consequence, that the thought and intentions of the framers are not particularly relevant to a discussion of issues related to modern campaigns and campaign spending. But the American political thought of the 1770s and 1780s has one particularly

important idea to contribute to discussion of these issues: the idea of "the public good."

Time has made the term "republican government" almost synonymous in common American parlance with the idea of government by elected representatives. To the Americans of 1776, creating new representative state governments was certainly part of the work of creating republican governments, but it was only a part. In 1776 a republican government was not defined simply in terms of institutional forms or processes. Rather, a republican government was one in which the "public good" was the only objective of government.

The substance of the public good was difficult to define, but as Wood writes, it

> *. . . was not, as we might today think of it, simply the sum or consensus of the particular interests that made up the community. It was rather an entity in itself, prior to and distinct from the various private interests of groups and individuals* (Wood, 1969: 58).

The public good was considered to be morally superior to the narrower interests that exist in any society, and it could be discerned only by citizens who would consider what was best for the whole society, rather than what was best for themselves.

The American colonists immersed themselves in political writing that extolled the glories of republican government. While this literature celebrated English liberty some of it also complained of governmental encroachments on this liberty. This literature, and the history of monarchical government in Europe, convinced many Americans that in most societies two distinct interests existed: that of the government and that of the governed. While the governed sought liberty, governments sought power. And power preyed on liberty.

As their relations with England worsened throughout the 1760s and 1770s, more and more Americans became convinced that the government of Great Britain intended to extinguish their liberties and impose a tyranny over all British subjects. Given this view of their situation, many Americans felt, with growing urgency, that they needed to sever their relationship with the government of Great Britain.

The next thing to be accomplished by the Americans was to exercise their right, proclaimed in the words of the Declaration of Independence, to "institute new government, laying it's foundation on such principles, & organizing it's powers in such form, as to them shall seem most likely to effect their safety & happiness." As Americans turned to the task of creating new state governments it was

clear that most of them hoped to erect governments on the "republican principle." A poet of the period expressed this intention:

> *Here Governments their last perfection take.*
> *Erected only for the People's sake:*
> *Founded no more on Conquest or in blood,*
> *But on the basis of the Public Good.*
> *No contests then shall mad ambition raise,*
> *No chieftains quarrel for a sprig of praise,*
> *No thrones shall rise, provoking lawless sway,*
> *And not a King to cloud the blissful day.*
> (Quoted in Wood, 1969: 55).

How did Americans expect to create governments that would pursue the public good? Part of the answer, it appeared, was to create governments in which most power was lodged in the branch of government—the legislature—in which popular election would encourage shared interests and goals between governors and governed. Another part of the answer was to minimize the power of the executive and the judiciary. Concern about the power of the executive was a natural residue of American experience with both the King and his colonial officers. It was generally conceded that judges could not properly be elected, but neither, as a consequence, could they be trusted with great power.

But proper design of the new governments was not itself sufficient to guarantee that they would produce proper republican policy. Much depended on the character of the people and whether they possessed "republican virtue." The French philosopher—historian Montesquieu described, in his book *The Spirit of the Laws*, the spirit that animated different systems of government. He wrote of monarchies and despotisms that "there is no great share of probity necessary to support" them. The threat of legal punishment in a monarchy and the threat of "the prince's arm" in a despotism were sufficient to maintain obedience and order. But in a popular republic, Montesquieu wrote, "one spring more is necessary, namely virtue" (Montesquieu, 1949: 20).

Republican virtue was a characteristic—a sentiment or passion—that moved individuals to put the good of society before any private interest. George Washington, who left the comforts of his home to lead the nation in war and to launch its new government, was hailed as an example of the purest republican virtue. The survival of a republic, though, required more than the timely appearance of a virtuous leader. The people, it was understood, must themselves be virtuous and seek the public good when choosing those who will govern or when chosen to govern.

The expectation of Americans that they could create and sustain republican systems of government in which the prime motive in making policy would be love of the public good may today seem

naive, even utopian. But the political literature of the 1770s and the popular state governments designed after the Declaration of Independence make it clear that Americans were determined to try.

THE CONSTITUTION, FACTIONS, AND THE PUBLIC GOOD: THE THEORY

A decade after Americans began their experiment with popular republican government James Madison expressed his conviction that the states' experiments with republicanism had not been very successful, his chagrin that the national government of the Articles of Confederation had not been an effective counter to this lack of success, and his belief that a properly designed national government might yet produce national policy for the public good. In Federalist #10 Madison wrote that "complaints are every where heard from our most considerate and virtuous citizens . . . that the public good is disregarded in the conflicts of rival parties." He continued: "However anxiously we may wish that these complaints had no foundation, the evidence of known facts will not permit us to deny that they are in some degree true." Madison concluded that "a factious spirit has tainted our public administrations." Madison saw this factious spirit at work both in clashes within state governments (over the use, for instance, of paper money to relieve the financial burdens of debtors) and in the unwillingness of the states to confer on the government of the Articles of Confederation the power it needed to pursue the best interests of the whole country.

Where was Americans' regard for the public good? Madison believed it had given way, in too many cases, to the mischiefs of faction. Madison defined a faction as

> *a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community* (Federalist #10).

In pursuing any interest other than the "permanent and aggregate interests of the community" factions worked, in effect, against the public good. In general, Madison wrote, humans are intellectually incapable of knowing with real certainty what is true or what course of action is best and so end up disagreeing with one another. This tendency to disagree is so pronounced in some people, Madison wrote, "that where no substantial occasion presents itself, the most fanciful distinctions have been sufficient to kindle . . . unfriendly passions, and excite . . . violent conflicts" (Federalist #10). Moreover, the partiality of human reasoning inclines almost everyone to mix and confuse judgments about their own self-interest with assertions about what is best for the whole society. Madison concluded that these facts made the existence of factions virtually inescapable.

He wrote,

> *. . . a landed interest, a manufacturing interest, a mercantile interest, a monied interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views* (Federalist #10).

But while Madison believed factions were inevitable he did not believe that this precluded the creation and maintenance of a government that would be both accountable to the public and that would pursue the public good. Indeed, Madison's #10 was intended to convince Americans that the proposed Constitution would create just such a government. Madison claimed that an "extended republic," encompassing a large and diverse populace, would harbor such a multiplicity of factions and interests that no particular interest or combination of interests would come to dominate the councils of the national government. The proposed Constitution, Madison asserted, would create just such an extended republic. In such a republic all factions would be rendered relatively ineffectual by their small size and the difficulty of working in concert. Breaking the power of factions would free society's governors to discern and pursue the public good. But only if the right type of people governed.

Only one part—the House of Representatives—of one branch of the proposed government—the Congress—would be directly subject to the votes of a factious public. And the members of this body would be chosen from large districts, enhancing the chance that men with a broad reputation for virtue and good character would be elected instead of men of parochial and factious tempers. If a particular Representative with a narrow, factious point of view was elected to the House this individual would discover, soon enough, the need to join with others in crafting policies for the public good that could attract a legislative majority. To these curbs on factious influence were added the checks of the Senate and the Presidency, which Madison discussed in his other classic essay, Federalist #51.

FACTIONS AND POLITICS: THE REALITY

Madison's literary and theoretical brilliance are displayed unmistakably in Federalist #10. So too is his genuine concern for the preservation of a role in government for virtue and the pursuit of the public good. But by the time of his own presidency (1809-1817) the realities of American politics and society bore almost no resemblance to Madison's somewhat genteel vision of government by virtuous men, untainted by factious impulses.

America's departure from Madison's vision began as soon as the Constitution's new government began to operate. Disagreements over fiscal and economic policy issues quickly pitted Secretary of

the Treasury Alexander Hamilton against Secretary of State Thomas Jefferson and Madison, then a member of the House of Representatives. The rancor of these disagreements is evident in a letter from Jefferson to President George Washington:

> *That I have utterly, in my private conversations, disapproved of the system of the Secretary of the treasury, I ackolege & avow: and this was not merely a speculative difference. His system flowed from principles adverse to liberty, & was calculated to undermine and demolish the republic, by creating an influence of his department over the members of the legislature. I saw this influence actually produced, & it's first fruits to be the establishment of the great outlines of his project by the votes of the very persons who, having swallowed his bait were laying themselves out to profit by his plans: . . . These were no longer the votes then of the representatives of the people, but of deserters of the rights & interests of the people . . .* (Peterson, 1975: 456).

The seeds of the country's first political parties—the Federalists and the Republicans—were sown in the conflict over Hamilton's financial plan. Under Hamilton's leadership the Federalists began publishing a paper (with public money), the *Gazette of the United States*, to express their views. In response, Jefferson gave a clerkship at the State Department to Philip Freneau, who also took on, not coincidentally, the editorship of the anti-Federalist *National Gazette*.

As the parties sought to advance their policy preferences they naturally turned to the people for support. The American people, meanwhile, were becoming increasingly insistent on playing a larger role in their national government. The development of political parties and the democratization of American politics thus went hand in hand.

By the early 1800s many Americans were calling for the elimination of property qualifications for voting. As the states heeded this call they expanded their electorates for state and local elections and for the U.S. House of Representatives. By 1832 every state but one had moved the power to select electoral college electors from state legislatures to voters. Candidates for election to the electoral college pledged themselves to vote in the college for a particular party and presidential candidate. The practice of popular election of pledged electors greatly democratized the selection of the President. In the years since the early 1800s the Constitution has been amended to expand the American electorate by including in turn, black men, women, and eighteen year-olds. The Seventeenth Amendment to the Constitution gave the choice of U.S. Senators to the voters.

The democratization of our national politics has created an arena—electoral politics—in which the American people choose who will

govern. Writing of the change that has occurred in American politics since 1787, Garry Wills writes:

> *In that world, the concept of public virtue had a hard and clear meaning, a heft and weightiness of the real, no longer apparent to us. We do not even pretend that we choose our politicians for their virtue. That kind of talk would look sappy or insincere in our political discourse* (Wills, 1981: 268).

If Wills is correct in claiming that we do not choose our public officials for their ability to discern, and readiness to pursue, the public good, we need to ask what we expect from them and how we try to make them meet our expectations. It is in elections that Americans express these expectations and it is, increasingly, in the connection between money and elections that Americans try to make these expectations stick.

MONEY AND ELECTIONS

America's sixth president, John Quincy Adams, wrote of the presidency that "to pay money for securing it directly or indirectly" was "incorrect in principle" (Quoted in Alexander, 1984: 5). Such a view of public service was becoming quaint by the time of Adams' presidency and Adams himself was swept from office by the insurgent democracy of Jackson.

The rise of popular democracy in America made it imperative for candidates to reach and communicate with voters. Alexander reports that in 1860

> *Abraham Lincoln secretly bought a small German weekly in Illinois for $400 and turned it over to an editor who agreed to follow the policies of the Republican party and to publish in both English and German* (Alexander, 1984: 6).

The Republican and Democratic parties spent a combined total of $150,000 in the presidential campaign of 1860. The cost of subsequent presidential campaigns mounted rather gradually until the divisive and controverted Hayes-Tilden contest of 1876. Spending in that campaign approached $2 million. Twenty years later William McKinley spent over $3 million against $675,000 spent by William Jennings Bryan. McKinley won, at least in part because of the notable exertions of Republican fund-raiser Mark Hanna, who specified for banks and other businesses their expected "quota" of contributions to the McKinley campaign. No presidential contest topped this $3 million mark until 1920.

The next remarkable spending peak came in 1936. Alf Landon, the Republican presidential nominee in 1936, proved, in spending almost $9 million while losing in a landslide, that there was more to winning an election than raising and spending money. The first $20 million presidential campaign took place in 1960. This was followed by a $24 million campaign in 1964, one costing about $37 million in

1968, and the record-smashing $91 million presidential campaign of 1972 (Figures on campaign spending adapted from Alexander, 1984:7).

Spending large amounts of money in campaigns is not confined to presidential campaigns. In 1972 a little over $26 million was spent in Senate campaigns. In 1982 the figure was $139 million. House races in 1972 cost $40 million. In 1982 they cost over $200 million (Alexander, 1984: 138).

The reasons for the increasing cost of political campaigns are not mysterious. The American electorate has grown considerably, and it now chooses the president (via the electoral college), the Senate, and the House of Representatives. The electorate expects to be courted by candidates. Courting costs money. The advent of radio and television have greatly expanded the capacity of candidates to reach voters, but use of these media is expensive. Combined spending for radio and television time by the 1980 Carter and Reagan campaigns topped $30 million, over half the total combined spending of these campaigns.

One further spur to escalating campaign costs is, simply, competition. Opponents in political campaigns tend to bid campaign costs up as they compete for votes. If one candidate has $1 million to spend in a campaign his or her opponent is likely to try hard to meet or exceed that figure. The other candidate knows this and raises and spends accordingly. Escalating expenditures take on a momentum of their own.

Regulating Elections and Money

The necessity for candiates for public office to gather money in order to mount effective campaigns has raised concerns that campaign contributions may give some individuals and groups improper influence on the selection of public officials and the making of public policy. Part of this concern stems from the familiar doctrine of political equality in America: each voter has only one vote, so all are equal. Americans are not naive. They know that there are ways, other than voting, of exercising political influence. But they become concerned when campaign contributions by individuals and groups seem to give those donors considerably more political clout than is wielded by the individual voter. Related to this concern, and going back to the idea that the public good should be the prime concern of lawmakers, is the worry that the need to be attentive to the policy interests of campaign contributors distracts public officials from a proper attentiveness to the broader public good.

These concerns have prompted a number of laws regulating campaign contributions and spending. The first federal campaign contribution law, passed in 1907, prohibited contributions by

corporations to candidates for federal office. A law requiring disclosure of campaign funds was enacted in 1910. The next major enactment was the Federal Corrupt Practices Act of 1925. The law sought to limit campaign expenditures but was easily circumvented. The Hatch Act of 1940 limited any individual's contribution to a federal candidate to $5000. But individuals could make additional contributions to various campaign committees, thus effectively avoiding contribution limits. In 1947 the Taft-Hartley Act extended the ban on corporate campaign contributions to labor unions.

More recently a series of laws and amendments established new rules on campaign contributions and spending. The Federal Election Campaign Act of 1971 limited contributions by candidates (or their own immediate families) to their own campaigns to $50,000 for presidential or vice presidential campaigns, $35,000 for Senatorial races, and $25,000 for House contests. The bill also sought to curb campaign spending in federal elections by restricting spending for communications media. It limited spending for such purposes to 10¢ per eligible voter, or $50,000, whichever was greater. The bill also required public disclosure of campaign contributions of $100 or over, and prohibited contributions by one person given in the name of another.

The Revenue Act of 1971 instituted a policy of public financing of presidential campaigns that first operated in 1976. Under the bill the Presidential Election Campaign Fund gave each major party's presidential nominee a sum of money in the amount of 15¢ for each U.S. resident over eighteen years of age. Candidates who accepted these public funds were prohibited from accepting campaign contributions from any other source. The bill allowed taxpayers to contribute $1 of their annual income tax to the Fund. The bill also sought to encourage more political contributions by allowing a tax credit or tax deduction for small contributions to candidates for local, state, or federal office.

The Watergate scandal, which was intimately linked to campaign activities, focused considerable attention on campaign finance. It was eventually learned that a few individuals had made whopping contributions to the campaigns of Nixon and McGovern. W. Clement Stone of Chicago contributed over $2 million to Nixon's 1972 campaign. Richard Mellon Scaife gave $1 million to Nixon's campaign. Stewart Mott gave $400,000 to McGovern's war chest. The Watergate special prosecutor discovered that a number of U.S. corporations had made illegal campaign contributions during the 1972 campaign. The twenty-one companies that pleaded guilty gave almost $1 million, with over 80% of that total going to the Nixon campaign.

Passage of the Federal Election Campaign Act Amendments of 1974 reflected post-Watergate concern about campaign finance.

The Amendments curbed large contributions by individuals by setting a $1000 limit on individual contributions to a candidate for each primary, runoff, or general election. The bill also set a $25,000 annual aggregate limit on individual contributions to federal candidates. Contributions from organizations, political committees, and national and state party organizations to a federal candidate were limited to $5000 in each election. Cash contributions over $100 were outlawed. The 1974 Amendments also established the Federal Election Commission, which is responsible for administering laws on campaign finance.

The 1974 Amendments also set spending limits of $10 million per candidate involved in the presidential primary process and $20 million per candidate in the presidential general election. In Senate primaries candidates were limited to spending $100,000 or 8¢ per eligible voter, whichever was greater. During Senatorial general elections campaign spending by candidates could not exceed $150,000, or 12¢ per eligible voter, whichever was greater. A limit of $70,000 was set for each candidate in a House primary, and the same limit was set for expenditures during House general election contests.

Political Action Committees

As the campaign finance legislation of the 1970s clarified which types of campaign contributions and expenditures were legal, political action committees—PACs—became more numerous and more prominent in campaigns. PACs come in two varieties. "Separate, segregated funds" are PACs that are established by labor unions, corporations, membership organizations, and trade associations. These organizations may maintain separate funds that are supported by voluntary contributions made by members and then contribute funds to candidates. "Nonconnected" political committees are not affiliated with any other organization. They raise and spend money to try to influence the outcomes of election campaigns.

The first political action committee was created by the CIO in 1943. Businesses and associations were slow in creating their first PACs. The American Medical Association created AMPAC in 1961. The National Association of Manufacturers created the Business-Industry PAC (BIPAC) in 1963. Corporations were particularly cautious about creating PACs because of questions about their legality. The Federal Election Campaign Act of 1971 authorized use of separate, segregated funds by corporations and unions, but doubts about whether government contractors could form PACs held some groups back. Stone reports that the "watershed event that legitimized corporate PAC activity" was an advisory opinion from the newly created Federal Election Commission making it clear that corporations and unions that were government contractors could

solicit voluntary contributions from their employers and contribute money to federal candidates (Stone, 1984:5).

113 PACs existed when the 1971 Federal Election Campaign Act Amendments went into effect. By December 1983 the number was 3,525. Corporate PACs now greatly outnumber labor PACs and association/membership group PACs. The amount of money given to candidates by PACs has also increased dramatically. In 1975 about $12 million was given to congressional candidates. The advent of public funding of presidential elections which prohibits, theoretically at least, PAC contributions to presidential candidates who accept public funding, coincided with the surge in the number of PACs in the mid 1970s. The result has been a shift of PAC money to congressional candidates. Over $87 million was given by PACs to congressional candidates in 1982. PAC contributions made up over 25% of total congressional campaign receipts in 1982.

Nonconnected political action committees have attracted a good deal of attention because they often make "independent" campaign expenditures. Instead of contributing to a particular candidate groups making independent expenditures simply spend money themselves, often for advertising, in an effort to influence election outcomes. These efforts frequently focus on the defeat of a targeted incumbent and, consequently, tend to convey essentially negative messages to voters. The National Conservative Political Action Committee, for example, spent over $3 million in 1980-81 to advocate the defeat of certain candidates.

Buckley v. Valeo

In 1976 the U.S. Supreme Court's ruling in *Buckley v. Valeo* had an important impact on campaign finance law. The case arose because of a challenge to the constitutionality of the 1974 Federal Election Campaign Act. The Court ruled that the 1974 Act's limits on contributions by candidates to their own campaigns, limits on independent PAC expenditures, and limits on campaign expenditures were unconstitutional. The Court ruled that these limits were unconstitutional restrictions of the First Amendment right to free speech and association.

The Court noted that any limitation on campaign contributions and expenditures restricts freedom of expression. But the Court distinguished between the degree of restriction involved in limiting contributions and the degree of restriction involved in limiting expenditures. In essence, the Court ruled that expenditure limits have a more severe impact on free expression than limits on contributions. Contributions to a candidate, which are intended—in the Court's view—to facilitate free expression by someone else (a candidate), may be limited. The Court accepted the claim that government has a legitimate interest in the prevention of corruption

or the appearance of corruption and therefore upheld limits designed to prevent the kinds of large contributions that raise the spectre of corruption. The Court upheld the $1000 limit on individual contributions to candidates and the $5000 limit on PAC contributions.

Expenditures,in the Court's opinion, have to be seen and treated differently. Any restiction on expenditures is a direct restriction on the "speaker's" ability to communicate with voters. The Court ruled, therefore, that limitations on campaign expenditures, limits on independent expenditures, and limits on candidates' contributions to their own campaigns are unconstitutional restrictions of free expression.

The Court rejected the claim that government had a legitimate interest in limiting the skyrocketing costs of political campaigns. It did, however, uphold the legality of restricting contributions to and spending by presidential candidates who accept public campaign funds. This ruling left the door open for those who advocate public funding of congressional elections as a way of limiting contributions and spending in congressional races. (CRS, 1976).

A NEW VIEW OF FINDING THE PUBLIC GOOD

What the Contribution Buys

In a recent book about money and politics Elizabeth Drew asked key questions about campaign finance: "Why is all this money floating about? What do the investors expect?" (Drew, 1983: 77). Drew's study of the issue concludes that one thing contributions can bring an individual or group is "access." One lobbyist reports:

> *We are in such a retail business that for a hundred and fifty dollars you can get access. There are some senior members of Congress whose fund-raisers I've gone to, giving a hundred and fifty dollars, and when I call I can get through. I think if I hadn't given the money it would have been harder. . . . I can imagine how someone who gives a thousand dollars or directs a five-thousand-dollar PAC contribution to someone is treated* (Drew, 1983: 77).

"Access" means a chance to inform a public official or candidate about one's stake or interest in public policy issues and to provide information and a point of view about the issues. Access is not necessarily influence. But access is an important prerequisite of influence.

Political action committees and other contributors use money to cultivate access, encourage their friends on Capitol Hill, and to oppose those who are not friendly. Drew reports that the National Association of Realtors asks congressional candidates to answer a questionnaire on issues about which it is particularly concerned.

The Realtors Political Action Committee contributed over $2 million to federal candidates between the beginning of 1981 and the end of 1982. Says Richard Thaxton, the vice-president for political affairs of the National Association of Realtors, "We go to an awful lot of receptions. We look at that as access money: 'We know you're there and casting votes, and we'd like to be able to talk to you.' " (Drew, 1983: 93) Thaxton continues,

> *Thirty percent of our money will go to Democrats and seventy percent to Republicans. But in terms of the numbers we give to, it's fifty-fifty, because the Democrats control the House and we go to a lot of two-hundred-and-fifty-dollar receptions. I can legitimately say to my Democratic friends that fifty percent of our giving is to Democrats, and I can legitimately say to my Republican friends that seventy percent of our money goes to Republicans. It's two different questions* (Drew, 1983: 93).

That political action committees focus their contributions on policy-makers who deal with certain issues of particular interest is evident from two 1986 reports issued by Common Cause. One of these states that "Sixty-five political action committees (PACs) which advocate strong U.S. support of Israel gave congressional candidates a combined total of $853,520 during 1985 . . . " The report continues, "nearly half of the 1985 contributions from these PACS—$397,625—went to 34 members of Congress serving on key committees with significant jurisdiction over questions of U.S. policy toward Israel" (*Common Cause News:* February 28, 1986). The other Common Cause study reports that "Political action committees (PACs) gave $6,693,915 to the 56 members of the Senate Finance and House Ways and Means Committees during 1985—when both committees were considering comprehensive tax reform legislation . . . " This amount was nearly two and a half times more than these members of Congress received in 1983 (*Common Cause News:* February 11, 1986).

Pluralism and the Public Good

The Madison of Federalist #10 would, no doubt, take a dim view of a political system in which so many groups—he would call them factions—work so hard to influence the content of public policy by giving campaign funds and cultivating access. But is Madison's standard the only one by which we can judge contemporary politics?

The political theory of pluralism claims to give an accurate description of how our political system works and finds much in its operation to commend. Pluralist theory emphasizes the primacy of groups in American politics. Americans, it is asserted, relate to the political system and political issues primarily through their perception of themselves as members of groups with group interests. Americans, then, ask two questions about any particular public

policy issue. Does this issue affect me? What is the interest that I, and others like me, have at stake in this issue?

Each person, in the pluralist view, is really a bundle of interests. One individual may be concerned about teachers' salaries, environmental issues, and property taxes. Another might be interested in civil rights issues and the problems of small businesses. Most such interests are already represented by interest groups. To a group of people who have a shared interest and want to pursue it in the political process pluralist theory offers a simple directive: get involved with a relevant interest group, and if there isn't such a group, organize it.

Pluralist theory portrays American politics as an on-going competition among interest groups for influence on public policy. On almost every issue one group or coalition of interest groups will find itself pitted against another group or coalition that desires a different policy outcome. Some groups compete for access and influence by contributing money to candidates. Others can deliver significant numbers of votes to a particular candidate. Some groups compete by providing information on issues. Others rely on litigation to shape policy. Many groups do all these things.

Pluralist theory maintains that every group that has an interest and that is willing to compete by the accepted rules of the game can have some influence on public policy. Of course, each group will win some and lose some, but every group that tries, it is argued, can get a hearing for its views and it won't lose all the time.

Growing out of the pluralist theory is a claim that the "public good," in the old republican sense, does not exist in any meaningful sense in American society today. Ours is a complex society that is fragmented into thousands of groups with specific interests. In such a society it becomes almost pointless to try to discern and seek a public good that transcends these divisions. For instance, most Americans are concerned about the size of the federal government's deficit. Would the public good be realized by the elimination of the deficit. Many Americans would answer "yes," though some economists would dispute that answer. But at the level of practical politics debate about balancing the budget quickly turns to the question of who must lose some government benefits and/or who is going to pay more in taxes. At this practical level interests of all sorts come into the political process to press their claims, and the high-minded search for the public good ends.

Instead of seeking a *substantive* public good, pluralism argues, we should focus on perfecting *procedural* guarantees that every group can make itself heard on issues it really cares about. Out of the welter of interest group pressure and counter-pressure comes

policy that roughly approximates the "public interest." No group will get all it wants, but no organized group will get left out entirely.

This pluralist point of view almost completely reverses Madison's views on factions: we need factions, and lots of them, if every interest in society is going to be adequately organized and spoken for. Campaign contributions also look different. If we wish to encourage wide-open interest group competition it is critically important to protect the First Amendment right of people to associate in groups and express their opinions through campaign contributions. While it is important, as the Supreme Court ruled in *Buckley v. Valeo*, to avoid the possibility of untoward and corrupt group influence, it is also crucial, in the pluralist account of things, to allow groups to use campaign contributions to get access to policy-makers and make their views known.

PROPOSED CONSTITUTIONAL AMENDMENTS

Whether the old republican view of factions or the pluralist view of groups is valid is, perhaps, the key issue at the heart of current debates over amending the Constitution to allow limitations on campaign contributions and spending.

Advocates of limitations on campaign spending see a link between campaign contributions and campaign spending that the Supreme Court did not emphasize in its *Buckley* decision. Drew describes this linkage when she comments:

> *It is often said that what is driving the chase for money on the part of candidates for Congress is the ever-increasing cost of campaigning, but that gets it backward. What is driving the chase for money is its own momentum. It is the domestic equivalent of the arms race. A candidate feels compelled to spend so much money because his opponent is spending so much, or might spend so much, or groups intent on his defeat are spending so much. . . . And the quest for money has distended and distorted the political system to the point where it bears little resemblance to what was supposed to be* (Drew, 1983: 94).

In 1982 U.S. Representative Jonathan Bingham, along with twelve other sponsors, introduced House Joint Resolution 628. The text of the proposed amendment to the Constitution follows:

> **Article—**
>
> **"Section 1. The Congress may enact laws regulating the amounts of contributions and expenditures intended to affect elections to Federal offices.**
>
> **"Section 2. The several States may enact laws regulating the amounts of contributions and expenditures intended to affect election to State and local offices."**

The amendment would, if added to the Constitution, reinstate the government's ability to regulate campaign contributions and expenditures that the Supreme Court denied it in *Buckley*. A similar amendment, Senate Joint Resolution 110, was introduced by Senator Ted Stevens in 1983.

In presenting his proposed amendment Representative Bingham asserted that with current campaign financing practices,

> *The political process is distorted, and public confidence in our domestic system is undermined, as high offices are perceived to be for sale to the highest bidder. The need to raise large sums for their campaigns puts incumbents and challengers under intolerable pressures and obligations that may well influence their conduct in office* (Congressional Record, December 8, 1982: 9205).

Bingham adds that Congress had sought, through the 1971 and 1974 legislation already discussed, and in subsequent laws, to control campaign spending. But the Court's *Buckley* ruling effectively took from the government the authority to make laws limiting campaign spending.

A restoration of that authority would allow Congress to enact laws that would limit total campaign spending by candidates for federal office. Such limits, presumbably, would prevent candidates from falling into the cycle of escalating expenditures and would, as a result, leave candidates much less dependent on interest group contributions.

Legislative limits could also be set on the amount of money a candidate could give to his or her own campaign. Alexander reports that in 1978 a total of 58 candidates for Congress gave at least $100,000 or more to their own campaigns (Alexander, 1984: 27). In 1982 Frank Lautenberg of New Jersey gave or lent $5.1 million to his own Senate campaign. Mark Dayton of Minnesota spent $6.9 million in his unsuccessful 1982 bid for a seat in the Senate (Alexander, 1984: 27). Justice Thurgood Marshall, in a dissent from the Court's *Buckley* opinion, wrote that:

> *. . . the perception that personal wealth wins elections may not only discourage potential candidates without significant personal wealth from entering the political arena, but also undermines public confidence in the electoral process* (Quoted in Congressional Record, December 8, 1982: 9206).

A third likely target for limitations is independent campaign spending. The Supreme Court ruled in *Buckley* v. *Valeo* that independent expenditures could not be limited. In *Common Cause* v. *Schmitt* the Court made it clear that this freedom to spend extends to presidential contests in which the major party's candidates have accepted public funding. In the 1980 presidential election campaign

groups spent $14 million independently, most of it on behalf of Ronald Reagan. Such spending, and independent spending in congressional campaigns, could be limited if the proposed amendment were adopted.

The proposed amendment would only set the stage for congressional action, and, because members of Congress have been known to consult their own self-interest before legislating, there are concerns about what they would do with the authority given them by the proposed amendment. A particular concern is the problem of how high spending limits for congressional elections should be. Research indicates that members of Congress benefit in elections from a pronounced "incumbency effect" (Jacobson, 1980). That is, they are generally well-known in their districts or states and they are in a position to provide a number of services and benefits to constituents that challengers can not provide. Challengers often must spend a good deal of money to overcome the name-recognition advantage enjoyed by incumbents. In fact, challengers often must outspend incumbents in order to overcome incumbents' advantages. Setting a ceiling on spending in congressional campaigns could, in normal political circumstances, go a long way toward guaranteeing that incumbents will win.

Representative Bingham states that "I do not accept the argument that Congress, being always composed of incumbents, will never treat challengers fairly" (*Congressional Quarterly*, December 8, 1982: 9206). Political scientist Jacobson has reached a different conclusion, asserting that as long as members of Congress "remain free to make campaign finance policy as it suits their individual and partisan interests" they "will no doubt continue to do so" (Jacobson, 1980: 226).

Leaving aside the debate over the likely motives of incumbent members of Congress who would, under the proposed constitutional amendment, make the new rules on campaign expenditures, there are other concerns about efforts to limit campaign spending. In making "The Case for PACs" Alexander concedes that while "competing interests may . . . cause what Madison calls 'the mischiefs of faction,' they may also bring to society ideas and values of great worth." Alexander adds that

> *the ability of groups and interests in society to articulate their demands, to coalesce and to oppose government with the resources they command, is the only reliable guarantee against dominance by either the government or the media* (Alexander, 1983: 15).

If campaign spending is limited then so, too, are opportunities for groups to convey to candidates, through campaign contributions, their concerns and policy preferences.

CAMPAIGNS AND THE PUBLIC GOOD: TWO VIEWS

It seems inevitable that, in the absence of restraint, campaign costs will continue to increase. The cost of communicating with voters continues to increase, and competition between opponents exerts constant upward pressure on campaign expenditures. Even as candidates have confronted the need to raise more money Americans have become more concerned about the sources of candidates' funds and the influence that individual and group contributors may exercise on the content of public policy. Two solutions to this problem have been proposed.

Every Citizen a Faction?

Alexander suggests that campaign spending "should be considered the tuition the American people must spend for their education on the issues." As he notes,

> . . . .many campaigns are not edifying, but, through all the political verbiage, issues are brought forward, and the nation determines its agenda. The people elected to office then determine public policies that affect all of us—an educational, if not always pleasing, process (Alexander, 1984: 196).

The problem, Alexander claims, is that "Americans are willing to spend only sparingly for politics" (Alexander, 1984: 197). Jacobson concurs that "most of the public is contented to enjoy a free ride" (Jacobson, 1980: 225).

Such attitudes work against any effort to institute public financing of congressional elections. As Jacobson writes, "It is very doubtful that the public would tolerate subsidies anywhere near the size that would permit effective competition in most congressional constituencies . . . (Jacobson, 1980: 226). These attitudes also work against an alternative suggested by Alexander: more small individual contributions. He writes,

> The value of contributing small sums for political activity is neither taught in schools nor widely understood as an act of good citizenship, although voting is both honored and respected, at least in principle. The challenge is to associate contributing with voting as an act of good citizenship, to upgrade and dignify political giving, and to gain for the popular financing of politics the public approval accorded voting (Alexander, 1984: 198).

In the 1930s Huey Long promised to make "Every Man a King." Alexander proposes, in effect, to make every citizen a faction. This might appear, at first glance, to be a prescription for pluralism run rampant. But careful consideration of Alexander's proposal makes it clear that, in a sense, he is proposing a solution that Madison might embrace. If campaigns are waged with small contributions given by numerous individual "factions," would not all these factions become relatively ineffectual at exerting pressure on the policy-making process?

Absent a dramatic change in public attitudes about the making of small contributions, Alexander's pluralist viewpoint leads him to call for all interests to become organized and involved in campaigns. While the "public good" may not be found in such a situation, the "public interest," in which every group gets some of what it wants, can be. Increased citizen involvement in politics through interest group competition will, at least, work to head-off the domination of policy-making by any particular group or coalition of groups. It will also work to ensure that policy-makers in government are attentive to the various concerns of America's myriad groups.

A Constitutional Remedy?

Proponents of a constitutional amendment that would allow Congress to limit campaign spending, and by extension campaign contributions, believe that the clamor of interest groups in American society is already so deafening that public officials have little chance to think about, and little incentive to pursue, the public good. More interest groups contributing more money only raises, in their opinion, the noise level of interest group politics. Easing the pressure on federal candidates to raise campaign funds will, such proponents believe, curtail opportunities for interest groups to cultivate both access to elected officials and a feeling, among those officials, of indebtedness to certain interests.

Certainly, amending the Constitution to allow limits on campaign spending will not be a sufficient step toward ushering in a "golden age" of virtue and regard for the public good. But advocates of the amendment believe that such a goal is worth pursuing, and that limiting campaign spending and contributions is a necessary step toward that goal.

ARGUMENTS FOR AN AMENDMENT THAT WOULD ALLOW LIMITS ON CAMPAIGN EXPENDITURES

- The fondest hopes of Americans of the founding generation focused on the desire to create republican governments that would pursue the public good. That desire is still valid.
- The skyrocketing costs of political campaigns put candidates under tremendous pressures to raise campaign funds. Interest groups are all too willing to make their contributions, but they use these contributions to cultivate access to and influence on policy-makers that works against the pursuit of the public good.
- While the Supreme Court allows limitations on campaign contributions as a way of avoiding the reality or appearance of corruption, its failure to limit spending only invites more groups to become involved in making contributions. While the recipients of these contributions may avoid corruption or the appearance of corruption, the ability of our government to pursue the public good is, nonetheless, corroded.
- The pluralist theory of American politics overlooks the fact that some groups have tremendous resources to use in influencing public policy while others have almost none. There are no Poor-PACs or Food Stamp PACs. How can a public official keep the needs of such unorganized people in mind when he or she must legislate in an environment that is dominated by well-organized and well-financed interest groups?
- The charge that members of Congress will not fairly use new authority given under the proposed amendment to the Constitution is not valid. Congress has already made rules to limit the use by members of their free mail privilege during campaign seasons.
- The Court's ruling that campaign spending is constitutionally protected speech calls for a constitutional remedy. The alternative solution, public financing of congressional campaigns, would be extremely expensive, especially if challengers are to be given funds sufficient to offset the advantages of incumbents.
- An amendment to limit expenditures would help control the negative campaigns funded by independent PACs.
- An amendment to limit expenditures would help keep wealthy candidates from dominating congressional elections.

ARGUMENTS AGAINST AN AMENDMENT THAT WOULD ALLOW LIMITS ON CAMPAIGN EXPENDITURES

- As much as we might like to live in a society where there is some discernible public good to be pursued by elected officials, we don't. In a pluralistic society like ours there are so many divergent interests that it is probably impossible to identify and pursue a transcendent public good.
- The best thing to do in a pluralistic society with a myriad of different interests is to encourage groups of all kinds to become involved—through campaign contributions and in other ways—in the political process.
- A constitutional amendment limiting campaign spending would inevitably limit opportunities for groups and individuals to make campaign contributions. This would limit citizens' ability to influence the content of public policy. That's bad.
- Rather than seeking to curb citizens' ability to make their policy preferences known, we should encourage the development of more interest groups. The more points of view that are represented the better the chance that every citizen will feel that his or her voice has been heard.
- The goal of political campaigns is to let as many voters as possible learn about the candidates and their positions on public issues. If campaign spending is restricted this will limit the voter-education potential of campaigns.
- Congress may use new authority in the area of campaign spending to set spending limits that will virtually insure, given the advantages of incumbents, that incumbents will be reelected.
- The right of free speech is essential to the maintenance of a free society. Actions that limit the ability of candidates and citizens to publicly express their opinions about public issues are inherently dangerous to freedom.
- It is not a good idea to get into the practice of amending the Constitution to overturn decisions of the Supreme Court.

REFERENCES

Herbert E. Alexander, *Financing Politics: Money, Politics, and Political Reform*, 3rd Edition. Washington, D.C.: Congressional Quarterly Press, 1984.

Herbert E. Alexander, *The Case for PACs*. Washington, D.C.: Public Affairs Council, 1983.

_____, "Gimme a Break," *Common Cause News*, February 11, 1986. Washington, D.C.: Common Cause, 1986.

_____, *Common Cause News*, February 28, 1986. Washington, D.C.: Common Cause, 1986.

Congressional Research Service (CRS), *"Buckley v. Valeo: The Opinion of the United States Supreme Court in the Election Campaign Case: Summary and Commentary*. Washington, D.C.: Congressional Research Service, 1976.

Elizabeth Drew, *Politics and Money: The New Road to Corruption*. New York: Collier Books, 1983.

Alexander Hamilton, John Jay, and James Madison, *The Federalist Papers*. Available in various editions.

Gary C. Jacobson, *Money in Congressional Elections*. New Haven: Yale University Press, 1980.

Robert L. Lineberry, *Government in America: People, Politics, and Policy*. Boston: Little, Brown, 1981.

Baron De Montesquieu, *The Spirit of the Laws*. New York: Hafner Press, 1949.

Mary N. Stone, *Facts on PACs; Political Action Committees and American Campaign Finance*. Washington, D.C.: League of Women Voters Education Fund, 1984.

Merrill D. Peterson, ed., *The Portable Thomas Jefferson*. New York: Viking Press, 1975.

Garry Wills, *Explaining America: The Federalist*. New York: Doubleday, 1981.

Gordon S. Wood, *The Creation of the American Republic, 1776-1787*. New York: W.W. Norton, 1969.

The Jefferson Foundation
1529 18th Street, N.W.
Washington, D.C. 20036
(202) 234-3688

The Jefferson Foundation is a non-profit, tax-exempt organization incorporated in Washington, D.C. The Foundation has two major purposes.

- *To enhance the public's critical understanding of the Constitution and its history by involving citizens in debate and discussion of the fundamental principles of American government.*
- *To study historical trends and stimulate citizen discussion of constitutional reforms which have been proposed in Congress and endorsed by various groups as ways of improving the structure and functioning of government.*

The Jefferson Foundation is a strictly non-partisan, non-advocacy organization which takes no position on any of the reform issues it studies. Its role is to promote informed and rational discussions of the fundamentals of the American system and to facilitate public understanding of how the Constitution was made.